

BANKER-CUSTOMER RELATIONSHIP



BANKER-CUSTOMER RELATIONSHIP

A relationship between a banker and a customer comes into existence when the banker agrees to open an account in the name of the customer.

The relationship between a banker and a customer depends on the activities, products, or services provided by the bank to its customers or availed by the customer.

Thus the relationship between a banker and a customer is a transactional relationship.

Bank's business depends much on strong bondage with the customer.

Trust plays an important role in building healthy relationships between a banker and customer.

BANKING

The Banking Regulations Act 1949, Sec.5 (b) defines the term banking as “Banking means accepting, for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, and order or otherwise.”

Sec.5(c) of BR Act defines "banking company" as a company that transacts the business of banking in India.

DEFINITION OF A CUSTOMER

- The term Customer has not been defined by any act. In simple words, a customer is a person to whom you extend your services in return of consideration.
- A customer is a person who maintains an account with the bank without taking into consideration the duration and frequency of operation of his account.
- To be a customer of a bank the individual should have an account with the bank. The individual should deal with the bank in its nature of regular banking business.
- Those who do not maintain any account relationship with the bank but frequently visit branch of a bank for availing banking facilities such as for purchasing a draft, encashing a cheque, etc.
- Technically they are not customers, as they do not maintain any account with the bank branch.

DEFINITION OF CUSTOMER

As per 'Know Your Customer guidelines issued by the Reserve Bank of India, the customer has been defined as:

- a) A person or entity that maintains an account and/or has a business relationship with the bank;
- b) One on whose behalf the account is maintained (i.e. the beneficial owner);
- c) Beneficiaries of transactions conducted by professional intermediaries, such as Stock Brokers, Chartered Accountants, Solicitors etc. as permitted under the law, and
- d) Any person or entity connected with a financial transaction, which can pose significant reputational or other risks to the bank, say, a wire transfer or issue of a high value demand draft as a single transaction.

BANKER-CUSTOMER RELATIONSHIP

- It obviously means that to become a customer account relationship is a must. An account relationship is a contractual relationship. Banking is a trust-based relationship. There are numerous kinds of relationships between the bank and the customer. The relationship between a banker and a customer depends on the type of transaction. Thus the relationship is based on a contract, and on certain terms and conditions.
- These relationships confer certain rights and obligations both on the part of the banker and on the customer. However, the personal relationship between the bank and its customers is a long-lasting relationship. Some banks even say that they have a generation-to-generation banking relationship with their customers.

CLASSIFICATION OF RELATIONSHIP

The relationship between banker and customer is of utmost importance. The relationship between a bank and its customers can be broadly categorized into General Relationships and Special Relationships.

General Relationship

If we look at Sec 5(b) of Banking Regulation Act, we would notice that bank's business is accepting of deposits for the purposes of lending. Thus, the relationship arising out of these two main activities are known as General Relationship.

DEBTOR AND CREDITOR

- ❖ When a 'customer' opens an account with a bank, he fills in and signs the account opening form. By signing the form he enters into an agreement/contract with the bank.
- ❖ When customer deposits money in his account the bank becomes a debtor of the customer and customer a creditor.
- ❖ The money so deposited by customer becomes bank's property and bank has a right to use the money as it likes.
- ❖ The bank is not bound to inform the depositor the manner of utilization of funds deposited by him. Bank does not give any security to the depositor i.e. debtor.
- ❖ The bank has borrowed money and it is only when the depositor demands, banker pays. Bank's position is quite different from normal debtors.
- ❖ While issuing Demand Draft, Mail / Telegraphic Transfer, bank becomes a debtor as it owns money to the payee/ beneficiary.

CREDITOR AND DEBTOR

- Lending money is the most important activities of a bank.
- The resources mobilized by banks are utilized for lending operations. Customer who borrows money from bank owns money to the bank.
- In the case of any loan/advances account, the banker is the creditor and the customer is the debtor.
- The relationship in the first case when a person deposits money with the bank reverses when he borrows money from the bank.
- Borrower executes documents and offer security to the bank before utilizing the credit facility.

SPECIAL RELATIONSHIP

- In addition to these two activities banks also undertake other activities mentioned in Sec.6 of Banking Regulation Act.
- In addition to opening of a deposit/loan account banks provide variety of services, which makes the relationship more wide and complex.
- Depending upon the type of services rendered and the nature of transaction, the banker acts as a bailee, trustee, principal, agent, lessor, custodian etc.

TRUSTEE AND BENEFICIARY

(BANK AS A TRUSTEE AND CUSTOMER AS A BENEFICIARY)

- **As per Sec. 3 of Indian Trust Act 1882, a "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. Thus, trustee is the holder of property on behalf of a beneficiary.**
- **In case of trust, banker customer relationship is a special contract.**
- **When a person entrusts valuable items with another person with an intention that such items would be returned on demand to the keeper the relationship becomes of a trustee and trustier.**
- **Customers keep certain valuables or securities with the bank for safekeeping or deposits certain money for a specific purpose (Escrow accounts) the banker in such cases acts as a trustee. Banks charge fee for safekeeping valuables.**

BAILEE AND BAILOR

(BANK-BAILEE AND CUSTOMER- BAILOR)

- **Sec.148 of Indian Contract Act, 1872, defines "Bailment" "bailor" and "bailee". A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.**
- **The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".**
- **Banks secure their advances by obtaining tangible securities.**
- **In some cases physical possession of securities goods (Pledge), valuables, bonds etc., are taken. While taking physical possession of securities the bank becomes bailee and the customer bailor.**
- **Banks also keeps articles, valuables, securities etc., of its customers in Safe Custody and acts as a Bailee. As a bailee the bank is required to take care of the goods bailed.**

LESSOR AND LESSEE

(BANK- LESSOR AND CUSTOMER- LESSEE)

Sec.105 of 'Transfer of Property Act 1882' defines lease, Lessor, lessee, premium and rent. As per the section "A lease of immovable property is a transfer of a right to enjoy the such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

Definition of Lessor, lessee, premium and rent:

- (1) The transferor is called the lessor,**
- (2) The transferee is called the lessee,**
- (3) The price is called the premium, and**
- (4) The money, share, service or other thing to be so rendered is called the rent.**

LESSOR AND LESSEE (BANK- LESSOR AND CUSTOMER- LESSEE)

- Providing safe deposit lockers is as an ancillary service provided by banks to customers. While providing Safe Deposit Vault/locker facility to their customers' bank enters into an agreement with the customer. The agreement is known as "Memorandum of letting" and attracts stamp duty.
- The relationship between the bank and the customer is that of lessor and lessee.
- Banks lease (hire lockers to their customers) their immovable property to the customer and give them the right to enjoy such property during the specified period i.e. during the office/banking hours and charge rentals.
- Bank has the right to break-open the locker in case the locker holder defaults in payment of rent. Banks do not assume any liability or responsibility in case of any damage to the contents kept in the locker. Banks do not insure the contents kept in the lockers by customers.

AGENT AND PRINCIPAL (BANK- AGENT AND CUSTOMER- PRINCIPAL)

- **Sec.182 of ‘The Indian Contract Act, 1872’ defines “an agent” as a person employed to do any act for another or to represent another in dealings with third persons.**
- **The person for whom such act is done or who is so represented is called “the Principal”.**
- **Thus an agent is a person, who acts for and on behalf of the principal and under the latter’s express or implied authority and the acts done within such authority are binding on his principal and, the principal is liable to the party for the acts of the agent.**

AGENT AND PRINCIPAL (BANK- AGENT AND CUSTOMER- PRINCIPAL)

Banks collect cheques, bills, and makes payment to various authorities' viz., rent, telephone bills, insurance premium etc., on behalf of customers. .

Banks also abides by the standing instructions given by its customers. In all such cases bank acts as an agent of its customer, and charges for these services.

As per Indian contract Act agent is entitled to charges. No charges are levied in the collection of local cheques through a clearing house.

Charges are levied in only when the cheque is returned in the clearinghouse.

INDEMNITY HOLDER AND INDEMNIFIER

(BANK-INDEMNITY HOLDER AND CUSTOMER-INDEMNIFIER)

The dictionary meaning of the word Indemnity means 'security or protection against a loss or other financial burden'.

As per Section 124 of the Indian Contract Act 1872 the definition of the Indemnity is as follows. *'A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity"'*.

Right of indemnity-holder is defined in Section 124 of the Indian Contract Act 1872. An indemnity is an obligation by a person to provide compensation for a particular loss suffered by another person.

In case of banking, the relationship happens in transactions of issue duplicate demand draft, TDR, deceased account payment etc.

In that case indemnifier will compensate any loss arising from the wrong or excess payment. In these case banks is Indemnity Holder (Promisee) and customer is Indemnifier (Promisor).

HYPOTHECATOR AND HYPOTHECATEE

(BANK- HYPOTHECATEE AND CUSTOMER- HYPOTHECATOR)

The relationship between customer and banker can be that of Hypothecator and Hypothecatee.

This happens when the customer hypothecates certain movable or non-movable property or assets with the banker in order to get a loan.

In this case, the customer became the Hypothecator, and the Banker became the Hypothecatee.

PLEDGER AND PLEDGEE

(BANK- PLEDGEE OR PAWNEE AND CUSTOMER- PLEDGER OR PAWNOR)

The relationship between customer and banker can be that of Pledger and Pledgee.

This happens when customer pledges (promises) certain assets or security with the bank in order to get a loan.

In this case, the customer becomes the Pledger or Pawnor, and the bank becomes the Pledgee or Pawnee.

Under this agreement, the assets or security will remain with the bank until a customer repays the loan.

MORTGAGOR AND MORTGAGEE

(BANK- MORTGAGEE AND CUSTOMER- MORTGAGOR)

As per section 58 of Transfer of Property Act 1882, mortgage is transfer of interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to pecuniary liability.

The mortgagor only parts with the interest in the property and not the ownership. The transferor of interest in property, is called a mortgagor and the transferee is called a mortgagee.

In this case, the customer became the Mortgagor, and the Banker became the Mortgagee.

AS A CUSTODIAN

A custodian is a person who acts as a caretaker of something. Banks take legal responsibility for a customer's securities.

While opening a D-Mat account bank becomes a custodian.

AS A GUARANTOR

Banks give guarantees on behalf of their customers and enter into their shoes. A guarantee is a contingent contract. As per sec 31, of the Indian Contract Act guarantee is a "contingent contract".

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

ADVISOR AND CLIENT (BANK- ADVISOR AND CUSTOMER- CLIENT)

When a customer invests in securities, the banker acts as an advisor. The advice can be given officially or unofficially.

While giving advice the banker has to take maximum care and caution. Here, the banker is an Advisor, and the customer is a Client.

VARIOUS TYPES OF RELATIONSHIPS

TYPE OF TRANSACTION	BANK	CUSTOMER
Deposit in bank	Debtor	Creditor
Loan from bank	Creditor	Debtor
Safe Deposit vault (SDV Locker)	Lessor	Lessee
Safe Custody	Bailee	Bailor
Issue of Draft	Debtor	Creditor
Payee of a Draft	Trustee	Beneficiary
Collection of Cheque	Agent	Principal
Pledge	Pledgee (Pawnee)	Pledger (pawnor)
Mortgage	Mortgagee	Mortgagor
Hypothecation	Hypothecatee	Hypothecator
Sale/purchase of security on behalf of customer	Agent	Principal
Money deposited, but no instructions for its disposal	Trustee	Beneficiary
Article/Goods left by mistake by customer	Trustee	Beneficiary

TERMINATION OF RELATIONSHIP BETWEEN A BANKER AND A CUSTOMER

It would thus be observed that banker customer relationship is transactional relationship. The relationship between a bank and a customer ceases on:

- (a) The death, insolvency, lunacy of the customer;**
- (b) The customer closing the account i.e. Voluntary termination;**
- (c) Liquidation of the company;**
- (d) The closing of the account by the bank after giving due notice;**
- (e) The completion of the contract or the specific transaction.**

BANKERS' SPECIAL RELATIONSHIP

Normally, the customer operates his bank account.

There are many situations in one's life where an individual possessing property, bank accounts, etc. may not be in a position to perform his duties due to reasons like being abroad, ill, old, etc. In such situations, if the transaction requires the presence of an individual who is not able to be present personally, then the only way out is to give the powers to act on behalf of the individual to another person.

This is when a Power of Attorney deed is to be created.

It is very common these days to give the powers to a trustworthy person to conduct the registrations, sales or rent out, etc. if you are busy with your other schedules.

BANKERS' SPECIAL RELATIONSHIP

For banking operations, the customer may authorize, for his convenience, an agent or nominee to operate on his account.

Such authority is given either by way of a Mandate Letter or Power of Attorney. By mandate letter, the particular banker is informed that certain powers have been delegated whereas a power of attorney acts as a general notice and authority.

MANDATE LETTERS

- A letter of mandate is addressed by a customer to the bank informing that powers to operate the account (ordinary deposit account) have been delegated by the customer (the mandator) to a particular person (the mandatory). Such letters of mandate do not attract stamp duty.
- As far as possible, branches should require customers to execute powers of attorney when they desire to authorise their agent or nominee to operate on their account on a more or less permanent basis. The procedure of obtaining mandate letters instead of powers of attorney should, as far as possible, be limited to operations on ordinary credit accounts.

POWER OF ATTORNEY

A Power of Attorney is a legal document by which one person gives the right to perform or powers of transacting in matters relating to a property, banking, legal and judicial proceedings, tax payments, etc. to another person due to certain reasons like being out of the country, or getting old, or not able to look after one's duties in those matters etc.

A power of Attorney is an authority given by a written formal instrument whereby one person termed the donor or principal authorises another person termed the donee, attorney or agent to act on his behalf.

POWERS OF ATTORNEY ON BANK ACCOUNTS

A power of attorney may be special or general. A special power of attorney authorises a person to act in a single transaction whereas authority to act in more than one transaction such as a bank account or generally, is a general power of attorney.

The power of attorney is a stamped document. The power to operate an account will not include, by itself, the power to overdraw or borrow money.

Authority or power to borrow by the attorney should definitely/explicitly be stated/embodied in the instrument. Drawing on an overdraft account is borrowing.

TYPES OF POWER OF ATTORNEY

Power of Attorney can be of mainly two type;

1. General Power of Attorney: A person can give to another person a complete general right or power to act lawfully with respect to his property or bank accounts or tax payments, or registration work or to sue a third party etc. It is commonly termed as General Power of Attorney.

Either you can give a General Power of Attorney for all your properties, banking transactions, tax matters, registration, legal disputes and court matters etc. or you can give a general power to any one category like only for all property matters or only for all Banking processes etc. This type of power is very wide and has lot of risk if the attorney is not a trustworthy person.

TYPES OF POWER OF ATTORNEY

2. Special Power of Attorney: The other type of power granted is the special power which means it is granted for only a specific task or work. A special power of attorney is to be made by a person when any particular or specific task or act is to be done. Once the particular act is completed the special power of attorney comes to an end.

This is generally used when you want to rent out your property or appear for the registration of any property or appear in a court on behalf of the Principal or to appear before the Tax authorities etc.



BE A SMART BANKER

For updated Banking Knowledge visit my Website

www.bankingdigests.com

You **Tube** Banking Digest by Abinash Mandilwar

Update your Banking knowledge with my books available on all online and offline book stores

THANK YOU

